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# California State Senate

SENATOR  
**DARRELL STEINBERG**  
PRESIDENT PRO TEMPORE  
SIXTH SENATE DISTRICT

STANDING COMMITTEES:  
SENATE RULES  
CHAIR  
APPROPRIATIONS  
PUBLIC SAFETY



September 23, 2013

Honorable Stephen Reinhardt  
United States Courthouse  
312 North Spring Street, Suite 1747  
Los Angeles, CA 90012

Honorable Lawrence K. Karlton  
Robert T. Matsui United States Courthouse  
501 I Street  
Sacramento, CA 95814

Honorable Thelton E. Henderson  
United States District Court  
450 Golden Gate Avenue  
San Francisco, CA 94102

**Re:                                *Plata v. Brown*, No. C01-1351 THE (N.D. Cal.)  
                                      *Coleman v. Brown*, No. 90-cf-520-LKK (E.D. Cal.)  
                                      **Letter in Support of Governor's Request for Extension of Deadline****

Judges Reinhardt, Karlton and Henderson:

I respectfully submit this letter in strong support of Governor Brown's request for an extension to comply with the Three-Judge Panel's overcrowding reduction order.<sup>1</sup> The Governor's request reflects the State's enactment of Senate Bill 105, which presents a clear policy choice for the future of California's criminal justice system. S.B. 105, 2013-14 Reg. Sess. (Cal. 2013)

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<sup>1</sup> On September 16, 2013, the Defendants in the above referenced cases filed a REQUEST FOR AN EXTENSION OF DECEMBER 31, 2013 DEADLINE AND STATUS REPORT IN RESPONSE TO JUNE 30, 2011, APRIL 11, 2013, JUNE 20, 2013, AND AUGUST 9, 2013 ORDERS. Defs.' Req. for Extension *Plata v. Brown*, No. C01-1351 THE (N.D. Cal.) (ECF No. 2714) and *Coleman v. Brown*, No. 90-cf-520-LKK (E.D. Cal.) (ECF No. 4803). All references to the filings herein under the Three Judge Court in these cases will reference the docket number in *Plata* first, then *Coleman*.

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(hereinafter, SB 105). The State can continue the failed policies of prison-building and cell-rental that do nothing to reduce recidivism or crime. Or the State can invest in short, medium and long term strategies and policies to reduce recidivism, crime, and the prison population which will deliver durable and sustainable solutions to the State's prison overcrowding and prison health care crisis.

I am deeply concerned that the Court not view the State's most recent request for a delay as lacking in key details, or as yet another legal maneuver in this long-standing litigation. The Legislature's work with the Executive Branch over the last month is anything but a delay tactic. I wish to emphasize in the strongest possible terms that these actions have created an unprecedented opportunity to achieve the durable and sustainable solution to prison overcrowding that the Three-Judge Panel has consistently required. June 20, 2013 Op. & Order (ECF No. 2659/4662).

First, I wish to underscore the significance of the recent enactment of SB 105. This measure will have an immediate impact on reducing prison overcrowding. Specifically, this measure appropriates \$315 million and authorizes the State to take steps immediately to reduce prison overcrowding by contracting with in-state and out-of-state facilities to house California prison inmates. In the alternative, if the Court approves an extension of time to comply with the June 20, 2013 Opinion and Order, SB 105 does the following:

1. Requires the Department of Finance to report to the Legislature, **within 15 days**, if the court grants California reprieve from the existing order. The Department of Finance's report to the Legislature must also include specific details, including the associated cost savings, necessary to comply with a revised order. S.B. 105, sec. 22. **Since the nature and duration of the Court's extension could not be known at the time SB 105 was enacted, this provision provides an immediate mechanism to identify the savings that would be generated from not having to reach the overcrowding reduction order by December 31, 2013.**
2. Provides that the amount of funding the California Department of Corrections and Rehabilitation may expend to procure additional inmate housing capacity shall not surpass the level necessary to adhere to federal court orders and avoid the early release of prison inmates. S.B. 105, sec. 22. **This provision, by definition, limits the opportunity for out-of-state placements if a substantial enough delay in the order is extended. Furthermore, the longer the extension of time, the more savings will be generated for redirection into overcrowding and recidivism reduction efforts.**
3. Creates the Recidivism Reduction Fund to be available for appropriation by the Legislature for activities aimed at reducing the State's prison population, including, but not limited to, reducing recidivism. SB 105 also provides that if the amount of funding necessary to comply with a revised court order is less than the \$315 million appropriated by this measure, the Director of Finance shall direct the Controller to transfer the first \$75 million of such savings

to the Recidivism Reduction Fund. Any additional savings shall be allocated as follows: 50 percent shall revert to the General Fund and 50 percent shall be transferred to the Recidivism Reduction Fund. S.B. 105, secs. 12 and 22. **These transfers shall occur within 45 days of an order extending the deadline to comply. Therefore, these funds will be available for appropriation by the Legislature when the 2013-14 Legislative Session resumes in January 2014.<sup>2</sup> I will commit that the Senate will pass the first appropriation of these funds from the Recidivism Reduction Fund within the first months of the year.**

In addition and without respect to whether an extension of time is granted by the Court, SB 105 strengthens the existing California Performance Incentive Act of 2009 (S.B. 678, 2009-10 Reg. Sess. (Cal. 2009), which will provide an estimated \$100 million for an immediate increase in the rate at which counties are reimbursed for reducing felony probation failure rates. SB 105 makes these additional resources available to provide services to the felony probation population to improve their chances of success.

I respectfully submit that the following terms for the extension sought by the State would provide the necessary framework to further reduce prison overcrowding in the short-term and sustain those reductions for the long-term:

1. **Require the State to reduce overcrowding to 145 percent of design capacity by December 31, 2013.** This is consistent with the State's plan to expand *in-state* capacity through the use of county facilities and private contracts. Defs.' Req. for Extension at 3.
2. **Require the State to reduce overcrowding to 142.5 percent of design capacity by December 31, 2014.**
3. **Require the State to reduce overcrowding to 140 percent of design capacity by December 31, 2015.**
4. **Require the State to reduce overcrowding to 137.5 percent of design capacity by December 31, 2016.**
5. **Require the parties to provide additional briefing on meeting these revised targets.**

If the Court is inclined to provide a shorter extension, I would again respectfully suggest that the court consider an order that provides additional time (until December 31, 2016) to meet 137.5% of design capacity if the State continues to enact substantial or comprehensive reforms of its sentencing laws that are designed to maintain and enhance public safety while also reducing unnecessary prison incarceration.

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<sup>2</sup> S.B. 105 also provides that any amount of the original \$315 million appropriation that is not expended pursuant to Sec. 21, nor transferred pursuant to Sec. 22, at the end of the fiscal year ending June 30, 2014, shall be transferred to the Recidivism Reduction Fund. S.B. 105, sec. 22.

The Governor's request importantly describes critical steps and reforms already enacted. Defs.' Request for Extension at 5-9. Moreover, California continues to pursue a broad array of reforms which furthers our commitment to "right-size" our prison population. For example:

- California is leading the nation on implementing the Federal Affordable Care Act, which will provide access to healthcare to felons and parolees including medical, mental health and substance abuse treatment. Providing these basic services to criminal offenders have been shown to reduce the rates at which they re-offend.
- The 2013-14 California State Budget included a historic augmentation of \$200 million for mental health funding that will include mental health and substance abuse treatment for crisis treatment beds, mental health triage personnel, and mobile crisis support teams, all of which are available to the offender populations. A.B. 110, 2013-14 Reg. Sess. (Cal. 2013)
- The Budget Act also established Medi-Cal enrollment assistance and outreach for those transitioning from county jails and state prisons, and tripled the capacity of the Integrated Services for Mentally Ill Parolees (ISMIP) program. Id. Providing comprehensive mental health services has shown dramatic results, cutting the recidivism rate by more than half. For the 1,502 individuals in the program over the last three years, the recidivism rate was only 24 percent compared to 71 percent for other parolees.
- As mentioned in the Governor's request, in 2012 California voters enacted Proposition 36, which revises the three strikes law to impose life sentence only when the new felony conviction is "serious or violent" and authorizes re-sentencing for offenders currently serving life sentences if their third strike conviction was not serious or violent and if the judge determines that the re-sentence does not pose unreasonable risk to public safety. State and local officials can continue to work toward processing eligible cases in an expedient manner. California Penal Code §§ 667, 667.1, 1170.12, and 1170.125.

Taken together, the measures enacted by California over the last several years represent the greatest reforms in our systems of criminal justice in over 30 years. Still, as required by SB 105, we are fully prepared to continue to work towards developing and implementing additional changes that will improve public safety and effectively manage our prison population. These efforts can include review of the State's policy regarding Immigration Customs Enforcement (ICE) prisoners; increase resources to permit the prompt review of youthful offenders and life term inmates; make more effective use of the State's existing alternative custody program; and provide additional incentives and strategies to improve outcomes among criminal offenders.

The Court may be further informed by ordering the parties to provide input on these specific steps that can be undertaken to comply with the Court's extended deadline. I am optimistic that the parties would find conceptual agreement that these proposals would reduce overcrowding in

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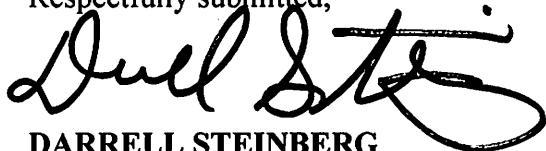
a manner more durable than adding temporary bed capacity. Moreover, many of these remedies could be put into place relatively quickly. These are all among the menu of remedies the State could deploy if granted sufficient time for them to be implemented and take effect. The effectiveness of these actions will be further advanced through the active engagement and collaboration of state and local stakeholders, which already have begun as indicated in the Governor's request for an extension. Defs. Req for Extension at 4.

If this Court grants an extension of time to comply with the overcrowding reduction order, there will be additional time and resources to build an enduring solution, one that recalibrates the balance and resources of our correctional system in a way that emphasizes improved outcomes among offenders through evidence-based practices and policies. Furthermore, it will avoid the need to send California inmates to out-of-state institutions. While California's fiscal situation has improved as a result of significant cuts that have been enacted in recent years, if the State is required to spend the resources needed to comply with the current Court order, which I'm informed will exceed \$1 billion over the next three years, there simply will not be anything left to invest for the more prudent, durable approaches to reducing overcrowding listed above.

As I have previously indicated, California is at a crossroads: we can spend hundreds of millions of taxpayer dollars annually to essentially rent more out-of-state, private prison beds, or we can invest in reducing the need for increased prison capacity through more effective local criminal justice practices and programs. Therefore, I respectfully urge the Court to approve an extension under the terms recommended above.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Darrell Steinberg', written in a cursive style.

**DARRELL STEINBERG**  
President pro Tempore

DS:aw

Cc: The Honorable Edmund G. Brown, Governor of California  
The Honorable John A. Perez, Speaker of the Assembly  
Mr. Donald Specter, Counsel for the Plaintiffs (*Plata*)  
Mr. Michael Bien, Counsel for the Plaintiffs (*Coleman*)